



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**CIVIL CASE NO.24 OF 2014**

NORRIS KIBE.....1<sup>ST</sup> PLAINTIFF

GIBSON WACHAGA.....2<sup>ND</sup> PLAINTIFF

BARBEL INVESTMENTS LIMITED.....3<sup>RD</sup> PLAINTIFF

**-VERSUS-**

EXXIM ENTERPRISES LIMITED.....1<sup>ST</sup> DEFENDANT

KENYA TEA DEVELOPMENT AGENCY LIMITED....2<sup>ND</sup> DEFENDANT

**RULING**

1. The three plaintiffs filed this claim on **22<sup>nd</sup> January 2014**. The 1<sup>st</sup> defendant filed its defence on **13<sup>th</sup> February, 2014**, while the 2<sup>nd</sup> defendant filed its defence on **12<sup>th</sup> February 2014**. By end of **February 2014** pleadings, in this matter, had closed.
2. By this court's Ruling delivered on **11<sup>th</sup> November 2014** the court declined to enter judgment against the 2<sup>nd</sup> defendant as sought by the plaintiff's application dated **17<sup>th</sup> May 2014**.
3. The matter was thereafter fixed for case management conference (CMC) and was lastly in court on **13<sup>th</sup> March 2017** when the plaintiff's learned counsel informed the court that the plaintiff had not complied with CMC. No further dates were fixed by the plaintiff.
4. The 2<sup>nd</sup> defendant by **Notice of Motion** dated **28<sup>th</sup> August 2018** seeks dismissal of this suit for want of prosecution. The application is brought under **Order 17 Rule 2 (1) and (3)** of the **Civil Procedure Rules**.
5. The application is based on the ground that the plaintiff has failed to take steps to set the suit for hearing since **13<sup>th</sup> March 2017**.
6. Although the plaintiff's advocate was served with a hearing notice for **3<sup>rd</sup> December 2018**, the plaintiff's advocate did not attend court and the application was therefore unopposed.
7. One can only therefore surmise that the plaintiff has lost interest in this matter which has remained unattended from **March 2017**. That period of non activity is more than a year, thereby satisfying **Order 17 of the Civil Procedure Rules**.
8. Accordingly, the plaintiff's suit is hereby dismissed for want of prosecution. The costs of the suit and of the **Notice of Motion** dated **28<sup>th</sup> August, 2018** are awarded to the 2<sup>nd</sup> Defendant and shall be paid by the plaintiff.

**DATED, SIGNED and DELIVERED at NAIROBI this 6<sup>th</sup> day of December, 2018.**

**MARY KASANGO**

**JUDGE**

**Ruling read and delivered in open court in the presence of:**

Court Assistant.....Sophie

..... for the Plaintiffs

..... for the Defendants

**MARY KASANGO**

**JUDGE**